STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of **SBC's** submission on performance measures, reporting, and benchmarks, pursuant to the October 2, 1998 order in Case No. U-11654.	))))	Case No. U-11830

At the March 26, 2003 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Laura Chappelle, Chairman
Hon. David A. Svanda, Commissioner
Hon. Robert B. Nelson, Commissioner

OPINION AND ORDER

On May 27, 1999, the Commission issued an order adopting an initial set of performance measures and benchmarks to be used in reviewing the compliance of Ameritech Michigan, now known as SBC, with its obligation to provide nondiscriminatory access to its facilities and services to competitive local exchange carriers (CLECs). The Commission subsequently modified those measures and benchmarks on a number of occasions. On April 17, 2001, the Commission adopted an enforcement mechanism in the form of "a remedy plan that complies with the [Federal Communications Commission's] standards, adequately compensates the CLECs for Ameritech Michigan's failure to meet the approved performance standards, and sufficiently motivates Ameritech Michigan to end any discriminatory conduct that impedes the development of competition in Michigan." April 17, 2001 order, Case No. U-11830, p. 5. On July 25, 2001, the Commission modified a portion of the remedy plan, the multiplier that the Commission had

determined should apply to SBC's proposed remedies. In suspending the multiplier, the Commission stated:

> [T]he Commission will suspend the multiplier for now in order to test whether the remedies without the multiplier are sufficient to motivate improved compliance with the performance measures and to compensate the CLECs. The Commission and the Staff will monitor Ameritech Michigan's performance during the next three months. At the end of that period, the Commission will issue a follow-up order, after a hearing if necessary, imposing a multiplier (which may be two or another number) if it finds that necessary to achieve the purposes of the remedy plan. Ameritech Michigan thus has an opportunity in the next three months to demonstrate that a further escalation of the remedies is not necessary to achieve the purposes of the plan and is not warranted in light of its improved performance.

July 25, 2001 order, Case No. U-11830, p. 3.

On February 25, 2002, after five months of remedy payments had been issued to CLECs and three months of payments had been paid to the State of Michigan under the terms of the remedy plan, the Commission issued an order commencing a review of the suspended multiplier. The Commission directed SBC to file a report discussing remedy payments made to date, along with SBC's position regarding the suspension of the multiplier. The report was also to include a discussion of the number of CLECs receiving remedy payments for Michigan operations (distinguishing between remedy payments made pursuant to the Commission-approved remedy plan and any other remedy plan), comparisons to estimated payments as discussed in SBC's June 7, 2001 motion for rehearing, and comparisons to remedy plan payments in other states, if available. The order provided that interested parties could file responses. The Commission concluded that, after reviewing the report and responses, it would issue a further order if it deemed it necessary.

On March 18, 2002, SBC reported the amounts paid to the CLECs and the state from August through December 2001 pursuant to the Commission-approved remedy plan. It also reported the

payments made pursuant to other remedy plans, including the 13-state generic remedy plan. As for comparing its estimate of February 2001 payments to actual results, it said that a direct comparison was not possible because of when the remedy plan went into effect. In any event, it said that the estimate was higher than the actual amount because only 10, not 55, CLECs were participating in the remedy plan and because its performance had significantly improved. As for comparisons with payments in other states, it said that the amount per CLEC in Michigan is higher than elsewhere, even without the multiplier. It also concluded that it was not necessary for the Commission to reinstate the multiplier because the remedy plan provides for an escalation in remedy payments for repeated substandard performance without the multiplier and because the payments without a multiplier provide sufficient incentives.

On April 1, 2002, XO Michigan, Inc.; ACD Telecom, Inc. (ACD); and AT&T Communications of Michigan, Inc., TCG Detroit, MCImetro Access Transmission Services, Inc., Brooks Fiber Communications of Michigan, Inc., and MCI WorldCom Communications, Inc., (collectively, AT&T et al.) filed responses.

XO Michigan says that the Commission should incorporate a multiplier of at least two into the remedy plan because SBC's service to the CLECs is worse than the service it provides to its own retail customers, the payments are far less than SBC estimated, and the payments are too insignificant to motivate SBC to provide quality service to the CLECs.

ACD says that SBC has reported inaccurate data that does not reflect its actual performance. It says that the magnitude of the errors demonstrates that the errors are not random, that the errors are all in SBC's favor, that SBC repeatedly and systematically provides false reasons for closing trouble tickets, and that SBC contradicts itself by providing correct data in one place and incorrect data in another.

AT&T et al. recommend that the Commission eliminate the "K table," reinstate the multiplier or adopt an even higher multiplier, order an independent audit of the remedy plan, and conduct a hearing to verify the accuracy of the performance metric gathering, retention, and reporting systems and the remedy plan payment data. They argue that the "K table" excludes from one-half to two-thirds of the remedies otherwise payable to them. They say that Wisconsin and Indiana both recognized the competitively harmful nature of the table and refused to adopt it, and that Illinois is headed in the same direction. They further argue that the level of payments is not sufficient to motivate SBC to improve its wholesale service quality.

The Commission concludes that it is necessary and appropriate to increase the incentives for SBC to provide nondiscriminatory access to its facilities and services. The most effective modification to the remedy plan for that purpose is elimination of the K table, which excuses a number of instances of noncomplying performance each month. As the competitive market develops in Michigan, it is important to ensure that SBC has sufficient incentives to provide, and then to continue to provide, nondiscriminatory service to the CLECs. The K table should therefore be removed from the remedy plan. With that change, which will increase the remedy payments, the Commission does not conclude that it is also necessary to reinstate the multiplier at this time.

The Commission does not conclude that there should be a hearing on the performance measures process. With the ongoing review by BearingPoint and Ernst & Young, there is no need for still another review of the performance measures. The Commission also does not conclude that an audit of the remedy plan should commence at this time, although during the next audit of the performance measures, it will be appropriate to audit the remedy payments as well. To the extent that a CLEC has individualized concerns about how the remedy plan has been implemented for it, this docket is not an appropriate forum for addressing its concerns.

Finally, the Commission concludes that SBC should publicly disclose aggregate monthly tier 1 remedy payments as it does tier 2 payments and that, in the context of negotiating interconnection agreements, SBC should ensure that providers are aware that the performance remedy plan approved in this docket is offered as an alternative to the merger agreement remedy plan.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1991 PA 179, as amended, MCL 484.2101 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACS, R 460.17101 et seq.

b. SBC should eliminate the K table from the performance remedy plan, should publicly disclose aggregate monthly tier 1 remedy payments, and should ensure that providers are aware that the performance remedy plan approved in this docket is offered as an alternative to the merger agreement remedy plan.

THEREFORE, IT IS ORDERED that SBC shall eliminate the K table from the performance remedy plan, shall publicly disclose aggregate monthly tier 1 remedy payments, and shall ensure that providers are aware that the performance remedy plan approved in this docket is offered as an alternative to the merger agreement remedy plan.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ Laura Chappelle
Chairman

(S E A L)

/s/ David A. Svanda
Commissioner

/s/ Robert B. Nelson
Commissioner

By its action of March 26, 2003.

/s/ Dorothy Wideman
Its Executive Secretary

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

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Chairman

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Commissioner

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Commissioner

By its action of March 26, 2003.

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Suggested Minute:

> "Adopt and issue order dated March 26, 2003 modifying the performance remedy plan to eliminate the K table and requiring, among other things, that SBC publicly disclose aggregate monthly tier 1 remedy payments, as set forth in the order."